

## **EXHIBIT B - RESTRICTIVE COVENANT**

### Georgia-Pacific Corporation

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(l)(f) and (g) and WAC 173-340-440 by the Georgia-Pacific Corporation [G-P], its successors and assigns.

An Interim Remedial Action (hereafter "Remedial Action") is to be conducted on the Property that is the subject of this Restrictive Covenant. The Remedial Action is described in the Agreed Order for Interim Action at the G-P Log Pond. The Log Pond is a sub-unit of the Whatcom Waterway Site. This document is an Exhibit to that Agreed Order entered into between the State of Washington Department of Ecology and G-P, No. \_\_\_\_\_.

This Restrictive Covenant is required because residual concentrations of mercury, phenolic compounds, and woody material above State of Washington Sediment Management Standards (SMS; Chapter 173-204 WAC) criteria will remain in sediments beneath an engineered cap at the G-P Log Pond after completion of the Remedial Action.

The undersigned, G-P, is the fee owner of Log Pond (hereafter "Property") which is located in the County of Whatcom, State of Washington, that is subject to this Restrictive Covenant. The Property is legally described in Attachment A of this Restrictive Covenant and made a part hereof by reference.

G-P makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1. The Property shall be used only for those defined in and allowed under the City of Bellingham's zoning and Shoreline Management regulations codified in the City of Bellingham as of the date of this Restrictive Covenant.

Section 2.

- a. As of the date the Agreed Order was entered, the Property contains surface sediment concentrations of mercury ranging from 1 to 12 milligrams per kilogram. The Property also contains phenol concentrations ranging from 960 to 1,800 micrograms per kilogram and greater than 50 percent wood material by volume. These areas are shown on the enclosed map (Attachment B). The Owner shall not alter or modify the cap or existing structure(s) in any manner that may result in the release or exposure to the environment of the contaminated sediment or create a new exposure pathway without prior written approval from Ecology, which approval will not be unreasonably withheld.
- b. The Owner shall not conduct any activity at or adjacent to the Property that may result in a release of hazardous substances to the Property without prior written approval from Ecology, which approval will not be unreasonably withheld.

Section 3. The Owner must give thirty (30) day advance written notice to Ecology prior to transfer of any interest in the Property. No conveyance of title, easement, lease or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 4. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.

Section 5. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment. Approval by Ecology pursuant to Section 5 shall not be unreasonably withheld.

Section 6. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect Remedial Actions conducted at the Property, and to inspect records that are related to the Remedial Action. Ecology will provide G-P advance notice of its entry onto the Site when feasible. Ecology shall adhere to applicable Health and Safety Plans to be developed.

Section 7. The Owner reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs, which concurrence shall not be unreasonably withheld.

DATED: \_\_\_\_\_

By \_\_\_\_\_

James W. Cunningham  
General Manager  
Georgia-Pacific West, Inc.

STATE OF WASHINGTON        )  
  ) ss.  
COUNTY OF WHATCOM        )

On this \_\_\_\_ day of \_\_\_\_\_, 2000, before me personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of \_\_\_\_\_, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that was authorized to execute the said instrument, and that the seal affixed, if any, is the corporate seal of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please print name legibly)

NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_.

My commission expires: \_\_\_\_\_.